

AD-41&42
Ct No.09
29.03.2023
TN

WPA No. 28717 of 2022

Sri Manas Ranjan Das
Vs.
The State of West Bengal and others

With

WPA No. 28744 of 2022

Sri Tapas Ranjan Das
Vs.
The State of West Bengal and others

Mr. Debashis Sinha,
Mr. Mohit Gupta,
Mr. Soumon Nanda,
Mr. Amritabha Maity

.... for the petitioners in
both the matters

Mr. Rajarshi Basu,
Ms. Susnita Saha

.... for the State in
WPA 28717 of 2022

Mr. Somenath Basu

.... for the State in
WPA 28744 of 2022

Ms. Bandana Basu

.... for the WBSEDCL in
both the matters

The contentions of the petitioners in both the matters, which arise out of the electricity connections to the same building, is that the petitioners have a seven months old child in the premises who is

suffering due to disconnection of electricity by the Licensee.

That apart, it is contended that a person, in the Indian Criminal jurisprudence, is presumed to be innocent unless proved guilty. At the present juncture, in connection with the proceedings levied against the petitioners under Section 135 of the Electricity Act, 2003 (for short “the 2003 Act”), the petitioners have obtained anticipatory bail upon deposit of fifty per cent of the amount assessed provisionally by the Distribution Licensee.

Moreover, it is submitted that no final order of assessment has as yet been drawn up upon giving adequate opportunity of hearing to the petitioners.

It is further sought to be contended that the petitioners are barely literate and they were not aware of the significance of signing on the seizure list, which they were made to sign on the misrepresentation that the same was for providing better electricity meters.

Learned counsel appearing for the Distribution Licensee controverts all such submissions of the petitioners. It is argued that the provisional assessment order was sought to be served on the petitioners repeatedly. Moreover, the service was returned by the postal authorities with the endorsement “refused” from the end of the petitioners,

which is good service in accordance with law. The petitioners, therefore, deliberately chose not to appear for final hearing in connection with the provisional assessment, for which the provisional assessment could not culminate in the final order.

It is further sought to be contended by learned counsel for the West Bengal State Electricity Distribution Company Limited (WBSEDCL) that within the contemplation of the 2003 Act, a consumer or an accused person shall only get a restoration of electricity connection upon payment of the entire amount of assessed dues which, not having been done in the present case, does not entitle the petitioners to get a reconnection at this stage.

A perusal of the materials and the affidavit(s)-in-opposition and reply filed by the parties indicates that there is nothing on record to show that any final order of assessment was drawn up by the Distribution Licensee against the petitioners.

Although learned counsel appearing for the WBSEDCL submits that she does not have any specific instructions on such score and seeks a short adjournment to take appropriate instructions on the matter, since affidavits have already been exchanged and the hearing is also at the last stage, at this belated juncture, the case made out in the opposition

by the Distribution Licensee cannot be permitted to be improved upon.

Hence, such further time for taking instructions is refused.

A composite reading of Sections 126 and 135 of the 2003 Act indicate that although the provisional and final orders of assessment are raised under Section 126, the disconnection of the electricity supply is effected within the contemplation of Section 135 of the 2003 Act.

The third proviso to sub-section (1-A) of Section 135 of the 2003 Act stipulates that on deposit or payment of the assessed amount or electricity charges in accordance with the provisions of the Act, the Distribution Licensee shall, without prejudice to the obligation to lodge complaint, restore the supply of electricity within forty-eight hours of such deposit or payment. Hence, it cannot be gainsaid that irrespective of the general criminal jurisprudence in India that a person cannot be held guilty unless so proved, the adjudication in the criminal proceeding under Section 135 has nothing to do with the restoration of electricity connection in view of the disjunctive third proviso of Section 135(1A), read with Section 126 of the 2003 Act.

A conjoint reading of the two indicates clearly that only upon a final order of assessment being made, the accused person is mandated to deposit the entire amount so assessed for the purpose of getting reconnection irrespective of the outcome of the proceeding under Section 135. Needless to say, the question as to whether the petitioners are guilty or not of the allegation of theft will only be decided upon final disposal of the criminal proceeding pending against them.

A more important issue in the present context is that the WBSedCL has failed to show compliance of Sub-Section (3) of Section 126 of the 2003 Act, which mandates the licensee to pass a final order of assessment within thirty days from the date of service of the order of provisional assessment of the electricity charges payable by such person.

In the present case, it cannot be said that the WBSedCL did not serve the provisional order of assessment on the petitioners, since the petitioners deliberately refused to accept service, which is, in the context of law, presumed to be a good service.

However, there is nothing on record to indicate that any final order of assessment was passed within thirty days from the date of service of such order of provisional assessment. Under the provisions of

Section 126, the person concerned is not duty bound to pay any amount merely upon the provisional assessment being made. Such compulsion arises only once a final order of assessment is made. A provisional assessment is made only for the purpose of giving an opportunity of hearing to the party concerned, on the *prima facie* assumption of the assessing officer.

Hence, it cannot be said that the petitioners were duty bound at any point of time, in the absence of any final order of assessment, to pay any amount to the Distribution Licensee. Hence, for the purpose of Section 135(1A), third proviso, it has to be construed that the amount required to be deposited for reconnection is NIL.

Although there is no sanction in Section 126 for non-compliance of Sub-Section (3) thereof, it is obvious from the tenor of the section that unless the mandate of thirty days is complied with by the licensee, it cannot be said that anything was due from the petitioners.

Moreover, in view of non-compliance of Section 126(3), the provisional assessment itself has lost force and lapsed.

Hence, the petitioners are entitled to restoration of electricity connection without depositing any further amount with the Distribution Licensee.

However, the fifty per cent amount already deposited as condition of bail has no direct link with the present adjudication. The same will abide by the outcome of the criminal proceedings.

In view of the above observations, WPA No. 28717 of 2022 and WPA No. 28744 of 2022 are disposed of by directing the WBSEDCL to restore the electricity supply of the petitioners at the premises-in-question without asking for any further amount within the midnight of March 31, 2023, only upon payment of necessary reconnection charges by the petitioners.

However, it is made clear that nothing in this order shall adversely prejudice the rights and contentions of the parties in the pending criminal proceedings, which will be decided independently and in accordance with law. Moreover, the WBSEDCL is at liberty to raise provisional assessment bills afresh and, upon serving a copy thereof on the petitioners and giving an opportunity of hearing to the petitioners, to pass final orders of assessment within the stipulated thirty days from the date of service of the orders of provisional assessment. If such orders

are passed, those will operate on independent footing, without being affected in any manner by any of the observations made herein and the WBSEDCL will be at liberty to take subsequent consequential steps in connection therewith.

There will be no order as to costs.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)